WP(C) 8701/2005
BEFORE
THE HON'BLE MR JUSTICE B.K. SHARMA

I have heard Mr. R.P. Sharma, learned Sr. Counsel assisted by Mr. B. Chakraborty, learned counsel for the petitioner as well as Mr. S.K. Das, learned Standing Counsel, Education Department. I have also heard Mr. C. Baruah, learned Standing Counsel, APSC. Mr. T.J. Mahanta as well as Mr. N. Deka, learned counsel has argued on behalf of the respondents No. 4 and 3 respectively.

This is the second round of litigation pertaining to the claim made by the petitioner for her appointment as lecturer in Physics pursuant to her selection by the APSC. She had earlier filed writ petitions being WP(C) No. 2882/2003 and 8221/2003. The facts and circumstances of the case have been stated in the judgment and order dated 4.8.2004 by which both the writ petitions were disposed of. To avoid repetition, the facts are not stated elaborately in this order. However, the basic facts are indicated below.

Pursuant to the advertisement issued by the APSC published in the issue of the Assam Tribune dated 17.5.2001 inviting applications for 15 posts of lecturer in Physics, the petitioner responded to the same by offering her candidature. Although she was selected by the APSC and her name was included in the select list at serial No. 35, but she could not be appointed in view of the stand of the respondents that her merit position did not come within the zone of consideration for appointment.

It is the case of the petitioner that some of the selected candidates including the respondent No. 3 and 4 having not possessed the required qualification, their candidature could not have been considered not to speak of inclusion of their names in the select list. Referring to the advertisement and the UGC guidelines issued from time to time, it is the case of the petitioner that the National Eligibility Test (NET) was one of the essential conditions which the private respondents did not conform, but, yet they were not only invited for the selection but were assigned higher merit positions than that of the petitioner. In fact out of 57 candidates included in the select list only 5 candidates including the petitioner are with the NET qualification. Thus it is the case of the petitioner that as per the requirement of the advertisement as well as UGC norms, the candidates who do not have NET qualification out not to have been considered for selection.

Noticing the above, the writ petitions filed by the petitioner were disposed of by order dated 4.8.2004 issuing a direction to the competent authority to consider the case of the petitioner against the 5 available vacancies. Be it stated here that those vacancies are not new vacancies, but are the vacancies of the relevant period. The Commissioner & Secretary to the Government of Assam in the Higher Education Department has rejected the claim of the petitioner by the impugned order dated 6.10.2005 (Annexure-4). The grounds on which the claim of the petitioner has been rejected are as follows:

(1) The petitioner's merit position in the select list does not bring her to the zone of consideration for appointment

(2) There are 3 other NET qualified candidates above her, who have also not been appointed.

(3) The NET qualification having been relaxed by issuing addendum dated 30.5.2001, the petitioner cannot insist upon such qualification so as to the claim superiority over others.

(4) The select list prepared by a statutory body cannot be put to challenge.

(5) The select list having expired on 16.12.2004, the petitioner cannot be appointed from the select list.

So far as the expiry of the select list is concerned, earlier two writ petitions having been filed within the validity of the select list, it could not have been said that the select list having expired after filing of the writ petitions, the case of the petitioner cannot be considered.

The moot question for consideration is as to whether in terms of the UGC guidelines as well as the advertisement, the qualification of NET is one of the essential conditions of eligibility. As per the advertisement, apart from the other qualifications clearing of NET was also the requirement. However, issuing the addendum dated 30.5.2001, it was informed that the candidates who were yet to qualify in the NET examination and/or were preparing for to avail any chance, might also apply affixing a declaration to that effect alongwith their application form. The addendum was issued by the Deputy Secretary, APSC in reference to the DO letter dated 24.5.2001 issued by the Secretary to the Government of Assam in the Education (Higher) Department. Nothing has been stated as to whether the addendum was published in the newspaper and also as to whether such addendum could have been issued on the basis of a DO letter issued by the Secretary of the Department.

Apart from the above, the addendum did not altogether relax the requirement of NET qualification. NET qualification remained one of the essentials, but by the addendum it was provided that the candidates who were preparing to avail the next chance for NET qualification would also be eligible to submit applications. Thus, at the time of selection, the candidates ought to have had the qualification of NET. It has been fairly submitted by the learned counsel for the private respondents that evenafter their appointments, they are yet to clear the NET qualification. Above aspect of the matter have been elaborately dealt with in the earlier judgment and order dated 4.8.2004. In the said order, decision of the Apex Court as reported in AIR 1995 SC 336 (University of Delhi Vs. Raj Singh) was referred to. In the said decision, the Apex Court held that qualification of NET was mandatory.

As regards the plea that 3 NET qualified candidates are occupying the position in the select list above the petitioner, suffice is to say that those candidates are not before this Court and they have also not raised any grievance in respect of their superiority, if any, in the matter of selection as has been raised by the petitioner. Even otherwise also when it is the admitted position that there are 5 vacancies, inspite of those 3 candidates above the petitioner, the petitioner can very well be accommodated against one of the 5 vacancies.

The Commissioner & Secretary has observed in the impugned order that the select list prepared by a statutory body cannot be challenged. Such view expressed by the Commissioner & Secretary is not at all tenable. Merely because the select list has been prepared by the APSC, it cannot be said the same cannot put to challenge. As regards the expiry of the select list, it has been noted above that the earlier 2 writ petitions were filed during the validity of the select list. If that be so, in terms of the decision of the Apex Court as reported in (2000) 3 SCC 699 (State of U.P. Vs. Ram Swarup Saroj) it cannot be said that the select list towards consideration of the case of the petitioner could not be operated since it expired on 16.11.2004. Even otherwise also, the select list has been further extended.

For all the aforesaid reasons, the impugned order dated 6.10.2006 (Annexure-O) is set aside and quashed and the matter is remanded back to the same very authority, which passed the order dated 6.10.2005. The said authority shall consider the case of the petitioner afresh against one of the 5 available vacancies. It is made clear that this order shall not be a precedent for any other candidates, whose names appear in the select list in question, since none of the selected candidates has approached this Court raising the similar grievance. This arrangement has been made in tune with the arrangement provided by the Apex Court in the decision as reported in (1986) 4 SCC 268 (Miss Neelima Shangla Vs. State of Haryana).

The competent authority shall now consider the case of the petitioner consistently with the observation made above and also taking into account the earlier judgment and order dated 4.8.2004 passed in WP(C) No. 2882/2003 and 8221/2003 and shall pass appropriate order in accordance with law.

The respondents shall carry out entire exercise as expeditiously as possible preferably within 31.5.2007. The petitioner may obtain a certified copy of this order and produce the same before the same very authority, which has passed

the impugned order for his fresh consideration in the matter consistently with the observations made above.

Writ petition is disposed of.